FILE COPY

IN THE

Supreme Court of the United States

October Term, 1947.

No. ~~12~~—Original.

[redacted]6

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA.

Motion of the City of Long Beach, a Municipal Corporation, for Leave to File Memorandum as Amicus Curiae and Memorandum of Amicus Curiae in Support of Answer of State of California to Petition for Entry of Supplemental Decree.

CITY OF LONG BEACH, a municipal corporation,

By IRVING M. SMITH,

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IN THE

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October Term, 1947.

No. 12—Original.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA.

MOTION FOR LEAVE TO FILE MEMORANDUM AS AMICUS CURIAE.

Motion.

The City of Long Beach, a municipal corporation, appearing herein through the following named counsel, respectfully petitions this Honorable Court for leave to file a Memorandum in Support of Answer of the State of California to Petition for Entry of Supplemental Decree.

CITY OF LONG BEACH, a municipal corporation,

By IRVING M. SMITH,

City Attorney of the City of Long Beach.

IN THE

Supreme Court of the United States

October Term, 1947
No. 12—Original.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA.

MEMORANDUM OF AMICUS CURIAE IN SUPPORT OF ANSWER OF STATE OF CALIFORNIA TO PETITION FOR ENTRY OF SUPPLEMENTAL DECREE.

Statement.

On January 29, 1948, counsel for plaintiff filed a petition for the entry of supplemental decree herein, seeking to have this Honorable Court determine the location of the line of the ordinary low-water mark of the Pacific Ocean on the California coast and outside the inland waters of the State of California, as applied to three segments of said coast referred to in Paragraphs 1 (a), 1 (b) and 1 (c) of said petition, and shown in Appendices A, B and C of said petition. It is contended in said petition that the "three-mile marginal belt" seaward of the lines proposed in said petition, extending seaward three nautical miles from the ordinary low-water mark

and outside the inland waters, bays, ports and harbors on the coast of California, is subject to the order and decree entered herein on October 27, 1947, wherein it was adjudicated and decreed that "the United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean . . ." and "The State of California has no title thereto or property interest therein."

The City of Long Beach is a municipal corporation, organized and existing under and by virtue of Sections 6 and 8 of Article XI of the Constitution of the State of California, and operating under a freeholders' charter (1921 California Statutes, page 2054). On May 1, 1911, the State of California granted to the City of Long Beach "all the right, title and interest of the State of California, held by said State by virtue of its sovereignty, in and to all of the tidelands and submerged lands, whether filled or unfilled, bordering upon, under and situated below the mean high tide line of the Pacific Ocean, or of any harbor, estuary, bay or inlet, which are within the corporate limits of said city" (1911 California Statutes, page 1304), in trust, to be used by the City solely for the establishment, improvement and conduct of a harbor and for the construction of wharves, docks, piers and structures necessary or convenient for the promotion and accommodation of commerce and navigation. This legislative grant was amended by the 1925 and 1935 Legislatures (1925 California Statutes, page 235, and 1935 California Statutes, page 794). These amendments authorized the use of said tide and submerged lands, in addition to the purposes stated in the 1911 grant, for public parks, parkways, highways and playgrounds. Since May 1, 1911, the City

of Long Beach has exercised proprietary control and jurisdiction over said tide and submerged lands by appropriate procedure for the uses authorized and consistent with the provisions of its City Charter.

Interest of the City of Long Beach.

The southerly boundary of the City of Long Beach, since prior to 1911, as established by its City Charter, is fixed as extending three miles from the line of ordinary high tide into San Pedro Bay, bordering upon the Pacific Ocean, between the easterly and westerly boundaries of the City. The water front of the City of Long Beach consists of 8.11 miles and thereon is located one of the major municipally owned harbors and ports of the nation.

There are 13,027 acres of tide and submerged lands, including reclaimed tide and submerged lands, within the corporate limits of the City which have been conveyed to the City by the above-referred to state grants, the far greater portion of which lies seaward of the lines proposed in Paragraphs 1 (b) and 1 (c) and shown in Appendices B and C of said petition for entry of supplemental decree.

Harbor facilities have been constructed entirely upon reclaimed submerged lands granted to the City by the State, at a cost in an amount in excess of $15,500,000.00, with additional new port facilities in process of construction under existing contracts at an additional cost of $7,575,641.00. Projected harbor improvements planned by the City call for an additional expenditure of $97,498,000.00, the far greater portion of which improvements will be located upon and extend into the presently submerged lands seaward of the line proposed in Paragraph 1 (b) of said petition and shown in Appendix B thereof.

From revenue provided by bonds voted by the electorate of the City a semi-circular pier was constructed, extending approximately 1400 feet seaward from the mean high tide line, enclosing therein approximately 47 acres, within which an eight-acre fill was made and developed into a park, on which was constructed a municipal auditorium, all at a total cost to the City in the sum of $2,731,714.86. The proposed line set forth in Paragraph 1 (b) of said petition is located a short distance seaward of said improvements and terminates at the low tide mark southeast of and near said improvements.

The line proposed for the third segment, as set forth in Paragraph 1 (c) of said petition and shown in Appendix B thereof, begins at the termination of the proposed line set forth in Paragraph 1 (b) of said petition, as above pointed out, and follows the low tide mark along the beach front of the City of Long Beach southeasterly to Newport Bay. There are approximately 3.88 miles of ocean front in the City of Long Beach affected by the proposed line set forth in said Paragraph 1 (c). The ocean beach within the City in this area has been widened by the pumping in of sand to a width in excess of 400 feet, in order to accommodate and provide for public recreation uses. This recreational beach consists of the far greater part of the City's five miles of public beaches, parks and recreational areas on its ocean front. In this area the City has acquired in excess of 70% of all upland parcels of land, in order to guarantee the use of said reclaimed submerged areas for recreational use by the pub-

lic. The City maintains said area and provides lifeguards for the protection of the public. The sum of $146,562.00 was budgeted to meet the costs for lifeguard services in the current fiscal budget of the City.

A master plan of shoreline development for the County of Los Angeles was adopted September 4, 1945, which includes therein the development of approximately five miles of the ocean front in the City of Long Beach hereinabove referred to, a greater portion of which proposed development lies seaward of the line proposed in Paragraph 1 (c) of said petition and shown in Appendix B thereof. It is estimated that the City will expend approximately $20,000,000.00 in the completion of said improvements.

Serious questions of title to lands and improvements built thereon by the City are presented by said proposed petition for supplemental decree. These questions must be resolved in order that the construction of the above-referred to harbor, highways, parks and recreation improvements may proceed and public funds of the City be lawfully expended therefor.

Summary of Memorandum.

The City of Long Beach claims to be the owner of all the tide and submerged lands, whether filled or unfilled, within its harbor, its port and San Pedro Bay, within its corporate limits, and that said lands and water areas do not constitute segments of that area underlying the Pacific Ocean described in Paragraph 1 of the Decree of

this Court entered on October 27, 1947. The City, from public funds, has made vast improvements on said lands and exercised physical possession thereof. A large part of said area claimed to be owned by the City lies outside of and seaward of the proposed lines described in Paragraphs (1) (b) and 1 (c) of the proposed supplemental decree which it is respectfully submitted are within the Bay of San Pedro and constitute inland waters of the State of California and do not constitute portions of that area underlying the Pacific Ocean described in Paragraph 1 of the Decree of this Court entered on October 27, 1947.

In fixing the line demarking the limits of San Pedro Bay from the "three-mile marginal belt" and the area underlying the Pacific Ocean described in Paragraph 1 of the Decree of this Court entered October 27, 1947, many factual questions necessarily should be established by geographical, physical and historical evidence and judicial precedent. The location of the "low-water mark" as a boundary line of property the title to which is herein involved presents both questions of fact and questions of mixed law and fact for determination. It is respectfully submitted that these questions require the taking of evidence. Many serious legal questions are herein involved affecting titles and property rights of enormous values. These questions should properly be considered by a Master in Chancery, appointed to take evidence and make findings of fact and conclusions of law, subject to review by this Court.

POINT I.

Necessity for the Determination of Factual Questions.

Although plaintiff states in the proposed supplemental decree that Paragraph 1 (b) thereof relates to San Pedro Bay, as a matter of fact, both Paragraphs 1 (b) and 1 (c) relate to San Pedro Bay. This is clearly portrayed by the air photograph of San Pedro Bay portraying the coast line involved in said two paragraphs, which is marked Exhibit "A" and attached to the State's Reply to Memorandum in Regard to California's Answer to Plaintiff's Petition for Supplemental Decree filed herein. The Federal breakwater is clearly shown on said Exhibit "A," which lies seaward from the proposed lines described in Paragraphs 1(b) and 1 (c) of said petition, and therefore is contended by plaintiff to be located outside San Pedro Bay and in the open sea. This Federal breakwater is approximately 8.14 miles long and constructed at a cost of $25,000,000.00, for the purpose of protecting the ports and harbors of Los Angeles and Long Beach and providing a stillwater anchorage area for ships of the merchant marine and the United States Navy. It can hardly be seriously contended to the contrary that all the watered area landward of said Federal breakwater constitutes part of the ports of Los Angeles and Long Beach and therefore should be treated as inland waters of the State of California and not a part of the marginal sea. The determination of the limits of San Pedro Bay as inland waters presents many factual questions that may be

established by geographical, physical and historical evidence.

As was considered and established in the case of *United States v. Carrillo,* 13 Fed. Supp. 121, the seaward limit of San Pedro Bay as inland waters was fixed as lying landward from a line drawn from Point Lasuen at Huntington Beach on the east to Point Firmin on the west. This line is portrayed on the air photograph marked Exhibit "A," hereinabove referred to.

The proposed line described in Paragraph 1 (c) of said petition follows the "low-water mark" from a point in the City of Long Beach to Newport Bay. The mean high tide line constitutes the boundary line between private upland property and City-owned tide and submerged lands conveyed to it by the State. The mean high tide line has in some instances been located and fixed by judicial decree. (See *Borax Consolidated v. Los Angeles,* 296 U. S. 10.) As a matter or fact, the "low-water mark" along the segments described in Paragraphs 1 (b) and 1 (c) of said petition has never been surveyed or located upon the ground or established by any judicial decree. The term "low-water mark" itself has never been legally determined. Certainly most serious questions of fact and questions of mixed law and fact are here involved in determining the boundary line of property the title to which is involved. These questions should properly be considered by a Master in Chancery.

POINT II.

Necessity for Taking Evidence.

It is inconceivable that a line can be established fixing the limits of San Pedro Bay as inland waters and not part of the marginal sea without the taking of evidence. By judicial precedents (see *U. S. v. Carrillo,* 13 Fed. Supp. 121, and cases therein cited), consideration properly should be given to geographical, physical and historical evidence pertinent to the subject matter. By plaintiff's proposed supplemental decree this Honorable Court is asked to fix the boundary line of property owned by the City of Long Beach as well as private parties, including vast improvements constructed thereon of enormous value. The location of the boundary line affecting such titles must be capable of being located upon the ground. The term "low-water mark" at this time is meaningless as a description of a boundary affecting titles. Evidence properly should be taken to determine these serious questions.

POINT III.

Necessity for Determination of Legal Questions.

It is respectfully submitted that most serious legal questions are herein involved, affecting titles and property rights of enormous values. The seaward line fixing the limits of San Pedro Bay as inland waters has been judicially established. In the case of *United States v. Carrillo,* 13 Fed. Supp. 121, the Court stated:

> "It seems, therefore, and I so decide, that the Bay of San Pedro is that body of water lying landward from a line drawn from Point Lasuen to Point Fermin, and that the sovereignty of the United States and the territory of the state of California extends three miles to seaward from such line."

At present, a serious legal cloud has been cast upon the title of the City to the submerged and reclaimed submerged lands conveyed to it by the State. The proposed supplemental decree will only add confusion and uncertainty to the legal questions with which we are now confronted. No date has been suggested for the determination of the "low-water mark" nor has said "low-water mark" been defined by either legislative or judicial action.

Conclusion.

It is respectfully submitted that the outer boundary of San Pedro Bay should be fixed so as to embrace a much greater area than would be encompassed within said Bay by the lines described in said proposed supplemental decree, and it is respectfully urged that this Honorable Court deny plaintiff's petition for entry of supplemental decree, and that a Master be appointed to take evidence and make findings of fact and conclusions of law, as requested by the State of California in its answer to petition for entry of supplemental decree.

Respectfully submitted,

CITY OF LONG BEACH, a municipal corporation,

By IRVING M. SMITH,

City Attorney of the City of Long Beach.